

11 C.F.R. § 110.1(b)

INTERNAL REPORTS CHECKED: Disclosure Reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Mary Thomas for Congress and Roxane Nickeo, in her official capacity as treasurer (the "Committee"), filed a *sua sponte* submission (the "Submission") disclosing that the Committee: (1) accepted and failed to remedy excessive contributions designated for the 2016 Primary Election; (2) failed to remedy contributions received for the 2016 General Election; and (3) failed to file correct and timely disclosure reports.¹ The Reports Analysis Division ("RAD") later referred the Committee to this Office concerning the excessive primary contributions and general election contributions.²

For the reasons set forth below, we recommend that the Commission: (1) open a MUR in Pre-MUR 605; (2) merge RR 17L-35 into the MUR; (3) find reason to believe that the Committee violated 52 U.S.C. § 30116(f) by accepting excessive contributions; and (4) authorize pre-probable cause conciliation. We further recommend that the Commission take no action on the reporting violations detailed in the Submission because they have already been addressed in other contexts.³

¹ See Submission at 1-4 (May 23, 2017), Pre-MUR 605 (Mary Thomas for Congress); see also Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007).

² See RR 17L-35 at 1-2 (Mary Thomas for Congress) (Sept. 19, 2017) ("Referral"), incorporated herein by reference.

³ In an Administrative Fines matter, the Commission addressed the Committee's failure to file timely 48-Hour Notices regarding contributions received for the 2016 General Election. RAD referred the Committee's failure to file 48-Hour Notices to the Administrative Fines Program, and the Committee was assessed a civil penalty of \$5,386. See Administrative Fines Program-Final Determination Recommendation for the Failure to File 48-Hour Notices, AF 3337 (Nov. 13, 2017). In addition, as explained below, the Committee amended its reports to correct the other reporting violations, and those violations did not meet any threshold for referral to OGC or ADRO.

1 **II. FACTUAL BACKGROUND**

2 Mary Thomas was a candidate in 2016 in Florida's 2nd Congressional District. She lost
3 the 2016 Primary Election on August 30, 2016.⁴ On April 17, 2017, RAD sent the Committee a
4 Request for Additional Information ("RFAI") regarding its Amended 2016 October Quarterly
5 Report.⁵ The RFAI noted that the Committee reported excessive primary election contributions
6 totaling \$9,148; unrefunded general election contributions totaling \$69,245.12; contributions
7 totaling \$2,000 that appeared to be from limited liability companies; an anonymous \$1,000
8 contribution; and that the Committee failed to file 48-Hour Notices concerning 26 contributions
9 totaling \$54,974.⁶ The RFAI requested that the Committee take corrective action.⁷

10 On May 22, 2017, the Committee filed a response to the RFAI and a second Amended
11 2016 October Quarterly Report.⁸ These filings clarified the sources for \$6,998 of the primary
12 contributions that the RFAI questioned as excessive, clarified that the Committee did not receive
13 contributions from corporate sources, and identified the source of the anonymous contribution.⁹
14 Also on May 22, the Committee filed 48-Hour Notices concerning the contributions referenced
15 in the RFAI.¹⁰ The next day, the Committee filed the Submission, acknowledging the

⁴ See Submission at 2.

⁵ RFAI (Mary Thomas for Congress) (Apr. 17, 2017).

⁶ See RFAI at 1-6 & Attachments; see also Referral at 1-2, 4. The RFAI also noted that the beginning cash balance of the Amended 2016 October Quarterly Report did not match the ending balance of the 12-Day Pre-Primary Report and that the Committee had incorrectly reported receipts on Schedule A. See RFAI at 1, 5.

⁷ See RFAI at 1-6.

⁸ Miscellaneous Electronic Document (FEC Form 99) (Mary Thomas for Congress) (May 22, 2017), ("Response"); Amended 2016 October Quarterly Report (Mary Thomas for Congress) (May 22, 2017).

⁹ See Referral at 2 & n.1; see also Response at 1-2.

¹⁰ See 48-Hour Notices of Contributions/Loans Received (May 22, 2017) (Mary Thomas for Congress); see Submission at 3.

1 deficiencies outlined in the RFAI and stating that it had filed the missing reports and had
2 amended its other reports to correct some of the errors.¹¹

3 On September 19, 2017, RAD referred the Committee to this Office.¹² The Referral
4 noted that while the Committee had clarified \$6,998 of the purported excessive primary
5 contributions referenced in the RFAI, \$2,150 remained unrefunded.¹³ RAD also referred the
6 Committee for failing to refund \$69,245.¹⁴ in contributions designated for the 2016 General
7 Election.¹⁵

8 III. LEGAL ANALYSIS

9 The Federal Election Campaign Act of 1971, as amended (the "Act"), prohibits
10 individuals from making a contribution to a candidate with respect to any election in excess of
11 the legal limit, which was \$2,700 during the 2016 election cycle.¹⁶ A primary election and
12 general election are each considered a separate "election" under the Act, and the contribution

¹¹ Submission at 2-4.

¹² Referral at 1.

¹³ *Id.* at 2. The Submission discloses slightly more unrefunded primary contributions than the Referral. According to the Submission, the Committee accepted excessive primary contributions totaling \$3,200, out of which it refunded \$150. Submission at 3. The difference relates to \$1,050 in excessive contributions from Anna Perry that RAD included in the RFAI, but not in the later Referral. RAD did not include Perry's contributions in the Referral because the Committee's second Amended 2016 October Quarterly Report clarified that Perry did not exceed her contribution limit. *See* Amended 2016 October Quarterly Report at 60 (May 22, 2017). As to the alleged \$150 refund, the Committee has not submitted any evidence to support it and has not disclosed it in its reports.

¹⁴ The Committee filed an Amended 12-Day Pre-Primary Report, disclosing an additional \$400 general election contribution. *See* Referral at 4 n.2. According to the Referral, this contribution was not included in the referable amount because the Committee's amendment was received after RAD sent the RFAI, which did not include the contribution in its chart of unrefunded general election contributions. *See id.* Including this \$400 contribution, the total amount of 2016 General Election contributions the Committee received is \$69,645.12.

¹⁵ Referral at 2.

¹⁶ *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

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1 limits are applied separately with respect to each election.¹⁷ Candidates and political committees
2 are prohibited from knowingly accepting excessive contributions.¹⁸

3 Commission regulations permit a candidate or his or her authorized committee to receive
4 contributions for the general election prior to the primary election.¹⁹ If, however, the candidate
5 does not become a candidate in the general election, the committee must: (1) refund the
6 contributions designated for the general election; (2) redesignate such contributions in
7 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in
8 accordance with 11 C.F.R. § 110.1(k)(3).²⁰ The committee must do so within 60 days of the date
9 that the committee has actual notice of the need to redesignate, reattribute, or refund the
10 contributions, such as the date the candidate loses the primary or withdraws from the race.²¹

11 The record establishes that the Committee accepted \$2,150 in excessive contributions
12 designated for the 2016 Primary Election that were not refunded, reattributed, or redesignated.
13 The Committee also accepted contributions totaling \$69,645.12 that were designated for the
14 2016 General Election that were not refunded, reattributed, or redesignated after Thomas lost the
15 primary election. The Committee acknowledges that it accepted these contributions and does not
16 dispute that it failed to comply with the procedures outlined in the regulations to remedy them.
17 The Committee states that the violations were due to its campaign manager's negligence and his
18 failure to implement an effective accounting system.²² Given the Committee's failure to correct

¹⁷ 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); *see* 11 C.F.R. § 100.2(a)-(c).

¹⁸ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

¹⁹ *See* 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

²⁰ *Id.*; *see also* Advisory Op. 1992-15 (Russo for Congress Committee) at 2.

²¹ *See* Advisory Op. 2008-04 (Dodd for President) at 3; AO 1992-15 at 2, 3 n.2.

²² *See* Submission at 1-3.

1 the excessive contributions, we recommend that the Commission find reason to believe that the
2 Committee violated 52 U.S.C. § 30116(f) by accepting excessive contributions²³ and authorize
3 pre-probable cause conciliation with the Committee.

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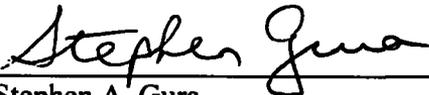
²³ See, e.g., Factual & Legal Analysis ("F&LA") at 5, MUR 6956 (Espaillat for Congress) (finding reason to believe that the committee violated the Act because it accepted and failed to remedy \$15,790 in excessive primary contributions and also failed to remedy \$22,550 in designated general election contributions after the candidate lost the primary election); F&LA at 5-6, MUR 6727 (Friends of Weiner); F&LA at 6, MUR 6230 (Wynn for Congress); F&LA at 5-6, MUR 6235 (Cannon for Congress).

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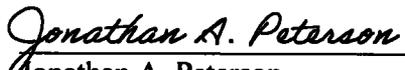
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Date



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Attorney

- Attachments:
1. Factual and Legal Analysis

UNCLASSIFIED

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 **RESPONDENTS:** Mary Thomas for Congress and
4 Roxane Nickeo in her official
5 capacity as treasurer
6

MUR: _____

7 **I. INTRODUCTION**

8
9 This matter was generated by a *sua sponte* submission (the “Submission”) filed with the
10 Federal Election Commission (“Commission”) by Mary Thomas for Congress and Roxane
11 Nickeo, in her official capacity as treasurer (“Committee”), and information ascertained by the
12 Commission in the normal course of carrying out its supervisory responsibilities.¹ The
13 Submission states that the Committee accepted and failed to remedy excessive contributions
14 designated for the 2016 Primary Election, and also failed to remedy contributions designated for
15 the 2016 General Election.² The Reports Analysis Division (“RAD”) later referred the
16 Committee to the Office of General Counsel for the same activity.³ For the reasons set out
17 below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30116(f)
18 by accepting excessive contributions.

19 **II. FACTS**

20 Mary Thomas was a candidate in 2016 in Florida’s 2nd Congressional District. She lost
21 the 2016 Primary Election on August 30, 2016.⁴ On April 17, 2017, RAD sent the Committee a
22 Request for Additional Information (“RAI”) regarding its Amended 2016 October Quarterly

1 ¹ See 52 U.S.C. § 30109(a)(2).
2 ² Submission at 1-3 (May 23, 2017).
3 ³ RR 17L-35 at 1-2 (Mary Thomas for Congress) (Sept. 19, 2017) (“Referral”).
4 ⁴ See Submission at 2.

1 Report.⁵ The RFAI noted, among other items, that the Committee reported excessive primary
2 election contributions totaling \$9,148 and unrefunded general election contributions totaling
3 \$69,245.12.⁶ The RFAI requested that the Committee take corrective action.⁷

4 On May 22, 2017, the Committee filed a response to the RFAI and a second Amended
5 2016 October Quarterly Report.⁸ These filings clarified the sources for \$6,998 of the primary
6 contributions that the RFAI questioned as excessive, but did not address the unrefunded general
7 election contributions.⁹ The next day, the Committee filed the Submission, acknowledging that
8 it received excessive primary and general election contributions.¹⁰

9 On September 19, 2017, RAD referred the Committee to this Office.¹¹ The Referral
10 noted that while the Committee had clarified \$6,998 of the purported excessive primary
11 contributions referenced in the RFAI, \$2,150 remained unrefunded.¹² RAD also referred the

⁵ RFAI at 1 (Mary Thomas for Congress) (Apr. 17, 2017).

⁶ See RFAI at 1-4 & Attachments; see also Referral at 1-2, 4.

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⁸ Miscellaneous Electronic Document (FEC Form 99) (Mary Thomas for Congress) (May 22, 2017), (“Response”); Amended 2016 October Quarterly Report (Mary Thomas for Congress) (May 22, 2017).

⁹ See Referral at 2 & n.1; see also Response at 1-2.

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¹² *Id.* at 2. The Submission discloses slightly more unrefunded primary contributions than the Referral. According to the Submission, the Committee accepted excessive primary contributions totaling \$3,200, out of which it refunded \$150. Submission at 3. The difference relates to \$1,050 in excessive contributions from Anna Perry that RAD included in the RFAI, but not in the later Referral. RAD did not include Perry’s contributions in the Referral because the Committee’s second Amended 2016 October Quarterly Report clarified that Perry did not exceed her contribution limit. See Amended 2016 October Quarterly Report at 60 (May 22, 2017). As to the alleged \$150 refund, the Committee has not submitted any evidence to support it and has not disclosed it in its reports.

1 Committee for failing to refund \$69,245.12¹³ in contributions designated for the 2016 General
2 Election.¹⁴

3 **III. LEGAL ANALYSIS**

4 The Federal Election Campaign Act of 1971, as amended (the “Act”), prohibits
5 individuals from making a contribution to a candidate with respect to any election in excess of
6 the legal limit, which was \$2,700 during the 2016 election cycle.¹⁵ A primary election and
7 general election are each considered a separate “election” under the Act, and the contribution
8 limits are applied separately with respect to each election.¹⁶ Candidates and political committees
9 are prohibited from knowingly accepting excessive contributions.¹⁷

10 Commission regulations permit a candidate or his or her authorized committee to receive
11 contributions for the general election prior to the primary election.¹⁸ If, however, the candidate
12 does not become a candidate in the general election, the committee must: (1) refund the
13 contributions designated for the general election; (2) redesignate such contributions in
14 accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in

¹³ The Committee filed an Amended 12-Day Pre-Primary Report, disclosing an additional \$400 general election contribution. *See Referral* at 4 n.2. According to the Referral, this contribution was not included in the referable amount because the Committee’s amendment was received after RAD sent it the RFAI, which did not include the contribution in its chart of unrefunded general election contributions. *See id.* Including this \$400 contribution, the total amount of 2016 General Election contributions the Committee received is \$69,645.12.

¹⁴ Referral at 2.

¹⁵ *See* 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1).

¹⁶ 52 U.S.C. §§ 30101(1)(A), 30116(a)(6); *see* 11 C.F.R. § 100.2(a)-(c).

¹⁷ 52 U.S.C. § 30116(f); 11 C.F.R. § 110.9.

¹⁸ *See* 11 C.F.R. § 102.9(e)(l). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.*

1 accordance with 11 C.F.R. § 110.1(k)(3).¹⁹ The committee must do so within 60 days of the date
2 that the committee has actual notice of the need to redesignate, reattribute, or refund the
3 contributions, such as the date the candidate loses the primary or withdraws from the race.²⁰

4 The record establishes that the Committee accepted \$2,150 in excessive contributions
5 designated for the 2016 Primary Election that were not refunded, reattributed, or redesignated.
6 The Committee also accepted contributions totaling \$69,645.12²¹ that were designated for the
7 2016 General Election that were not refunded, reattributed, or redesignated after Thomas lost the
8 primary election. The Committee acknowledges that it accepted these contributions and does not
9 dispute that it failed to comply with the procedures outlined in the regulations to remedy them.
10 The Committee states that the violations were due to its campaign manager's negligence and his
11 failure to implement an effective accounting system.²² Based on the foregoing, the Commission
12 finds reason to believe that the Committee violated 52 U.S.C. § 30116(f) by accepting excessive
13 contributions.²³

¹⁹ *Id.*; see also Advisory Op. 1992-15 (Russo for Congress Committee) at 2.

²⁰ See Advisory Op. 2008-04 (Dodd for President) at 3; AO 1992-15 at 2, 3 n.2.

²¹ See note 12.

²² See Submission at 1-3.

²³ See, e.g., Factual & Legal Analysis ("F&LA") at 5, MUR 6956 (Espaillat for Congress) (finding reason to believe that the committee violated the Act because it accepted and failed to remedy \$15,790 in excessive primary contributions and also failed to remedy \$22,550 in designated general election contributions after the candidate lost the primary election); F&LA at 5-6, MUR 6727 (Friends of Weiner); F&LA at 6, MUR 6230 (Wynn for Congress); F&LA at 5-6, MUR 6235 (Cannon for Congress).